

I. Background

Jordan is currently confined at the Garza West Unit in Beeville, Texas.¹ He sues TDCJ and Robin Abbott, who allegedly serves as an assistant general counsel for the Texas Board of Pardons and Paroles.²

Jordan contends that his parole was revoked improperly on May 23, 2016.³ He appears to claim that Abbott wrongfully denied his appeal from that proceeding, or that he was denied the right to appeal, in violation of his right to due process.⁴ Arguing that his parole should not have been revoked, Jordan requests injunctive relief in the form of an order setting aside the revocation and re-opening his parole hearing.⁵

II. Discussion

Jordan appears to take issue with a particular decision that resulted in the revocation of his parole and his return to prison. It is well established that the writ of habeas corpus provides the exclusive remedy for prisoners challenging the "fact or duration" of confinement. Preiser v. Rodriguez, 93 S. Ct. 1827, 1841 (1973). By contrast, an action under 42 U.S.C. § 1983 is the appropriate

¹Complaint, Docket Entry No. 1, p. 3.

²Id. at 3, 4.

³Id. at 4.

⁴Id.

⁵Id.

legal vehicle to attack allegedly unconstitutional conditions of confinement. See Cook v. Texas Dep't of Criminal Justice Transitional Planning Dep't, 37 F.3d 166, 168 (5th Cir. 1994).

Because Jordan challenges the fact of his incarceration and not the conditions of his confinement, his due process claims are actionable, if at all, under the federal habeas corpus statutes, 28 U.S.C. § 2254, and not 42 U.S.C. § 1983. See Preiser, 93 S. Ct. at 1841. Accordingly, the Complaint will be dismissed for failure to state a claim under § 1983.


III. Conclusion and Order

Based on the foregoing, the court **ORDERS** as follows:

1. The Prisoner's Civil Rights Complaint filed by Larry Donell Jordan (Docket Entry No. 1) is **DISMISSED** for failure to state a claim under 42 U.S.C. § 1983. The dismissal is **without prejudice** to re-filing his claims under 28 U.S.C. § 2254.
2. Jordan's motion for leave to proceed in forma pauperis (Docket Entry No. 2) is **GRANTED**.

The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the plaintiff.

SIGNED at Houston, Texas, on this 2nd day of December, 2016.



SIM LAKE
UNITED STATES DISTRICT JUDGE